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UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MISSOURI EASTERN DIVISION

RUSSELL SCOTT FARIA,)	
Plaintiff,)	
v.)	Case No. 4:16-CV-01175-JAR
SERGEANT RYAN J. McCARRICK, et al.)	
Defendants.)	

PLAINTIFF'S MOTION TO DISMISS COUNT I WITHOUT PREJUDICE

Comes now Plaintiff Russell Scott Faria, by counsel W. Bevis Schock, Joel J. Schwartz

Nathan T. Swanson and Hugh A. Eastwood, and states for his Motion to Dismiss Count I without prejudice:

- 1. As is known to the court, this is a civil rights case asserting that Defendants violated the constitution in the course of investigating, prosecuting and incarcerating Russell Faria for the murder of his wife.
- 2. Count I of Plaintiff's First Amended Complaint, Doc. #: 7, paras. 411-431, filed

 September 15, 2016, is a 42 U.S.C. 1983 claim against Defendant McCarrick asserting

 unlawful seizure of Plaintiff by Defendant McCarrick during the latter portion of the first

 two days after the murder. (Mr. Faria was released at the end of that period and then

 rearrested a few days later. The exact timing of the first arrest is irrelevant to this

 motion).
- 3. Plaintiff concedes, as suggested by Defendant McCarrick in his Memorandum in Support of his Motion for Summary Judgment, Doc. # 87, that during discovery Plaintiff has

failed to obtain evidence that Defendant McCarrick had authority to release Plaintiff during that time period.

- 4. Therefore Plaintiff has no choice but to dismiss the claim in Count I.
- 5. Plaintiff therefore moves to dismiss Count I without prejudice.
- 6. Defendants do not consent to this Motion, for they insist the dismissal be with prejudice, and Plaintiff intends that it be without prejudice.
- 7. (In order to save time Plaintiff notes that if the court insists that the dismissal be with prejudice if it is to concur at all, Plaintiff will agree to that arrangement).

WHEREFORE, Plaintiff prays the court to dismiss without prejudice Count I of Plaintiff's First Amended Complaint against Defendant McCarrick, (or if the court will only dismiss the claim with prejudice, Plaintiff agrees that the claim may be dismissed with prejudice).

Respectfully Submitted, Counsel for Plaintiff

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CERTIFICATE OF SERVICE

I hereby certify that on October 23, 2018 the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system upon the following: All counsel of record

/s/ W. Bevis Schock .

W. Bevis Schock, 32551MO